

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

MICHAEL MUEHL,

Plaintiff,

v.

Case No. 09-C-689

MOLLI ROLLI, et al.,

Defendants.

ORDER

On July 14, *pro se* Plaintiff filed a complaint and a motion for a preliminary injunction seeking an order requiring the Green Bay Correctional Institution (“GBCI”) medical staff to provide him with the medication of his choice, or else he would be at risk for suicide. Although the Defendants had not yet been served, I directed them to respond to the allegations within ten days. Apparently they did not receive the materials sent by the clerk, and upon the expiration of the ten-day period the Plaintiff again moved for a preliminary injunction. On August 5, the Defendants did respond. In their response, they note that Muehl failed to sign a medical authorization form, and thus the Defendants viewed themselves as unable to respond to his specific medical allegations. They have, however, provided an affidavit from Defendant Dr. McQueeny, who states that Plaintiff is in fact receiving appropriate medical care. (McQueeny Aff., ¶ 6.)

Plaintiff argues that he refused to sign the release form because the defendants have “defaulted themselves” by not responding within the ten-day period. But the ten-day period was merely this Court’s effort to expedite matters on the Plaintiff’s behalf – it was not a “gotcha”

entitling the Plaintiff to relief. Defendants had not even been properly served with the complaint, and Plaintiff had not even paid the initial partial filing fee. To be entitled to preliminary injunctive relief, one must establish that he deserves it, not merely that a defendant has failed to respond. Plaintiff must recognize that it would be preposterous to grant an inmate a preliminary injunction requiring a physician to prescribe a certain drug without hearing any evidence. Plaintiff simply relies on the “default” issue and has demonstrated no apparent willingness to proceed with the merits of this case. Accordingly, as the Plaintiff has failed to make a showing that he is entitled to preliminary relief, the motions for preliminary injunctions are **DENIED**.

Moreover, Plaintiff has failed to file a certified copy of his institutional account statement showing transactions for the six-month period immediately preceding the filing of his complaint, as required under 28 U.S.C. § 1915(a)(2). He was ordered to do so in a July 28 order. Because the time for filing such a statement has expired, his case is **DISMISSED** without prejudice.

SO ORDERED this 26th day of August, 2009.

s/ William C. Griesbach

William C. Griesbach
United States District Judge